IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6580 OF 2005

Varsha Sales and Services & Anr. ..Petitioners.

Versus

The State of Maharashtra & Ors. ..Respondents.

Mr.Mahendra Bajpai i/by M/s. Ashoka Law Firm for the Petitioners.

CORAM : S. A. BOBDE, J.

DATED : 04TH OCTOBER,2005.

P.C.:

1. By this petition, the petitioners have challenged the judgment and order of the Maharashtra State Co-operative Appellate Court dated 10.01.2005, partly allowing their appeal by making a minor alteration in the amount awarded.

2. Admittedly, the petitioners have subscribed to the scheme floated by the respondent No.2. As a part of the scheme, they signed loan documents that they

would stand guarantee to the loans which are disbursed to the member of the society. The recipients of the loan having failed to repay the loan amount, the society filed a dispute for recovery of the amount against the debtors and guarantors. The Co-operative Court Kolhapur on 24.08.2004 held that the petitioners are jointly and severally liable for the amount advanced to the respondent No.3 -Kiran Plywood Centre. The court directed repayment of Rs. 1,43,173.85/- along with future interest @ 16% per annum on the said amount from 03.05.2002 till realisation. This award has been confirmed by the State Co-operative Appellate Court by reducing it to sum of Rs.1,31,581.85/- and interest at 14% per annum.

3. Mr. Bajpai, the learned counsel for the petitioners contended that the petitioners could not have been held to be the guarantors since they were not aware of the persons in whose name a loan was advanced and that the method adopted for awarding loans in view of the Chit Funds Act. Since the loan was disbursed by way of a lucky draw to a member or a person and others who had subscribed to the scheme, have become sureties to the loan. There is no dispute that this method of awarding the loan was subscribed

to by the petitioners with open eyes. They obviously, made no grievance about it till there was a default and the proceedings were initiated for recovery of the loan for which they were held liable as sureties. It is clear that no such grievance was made because according to the scheme, it might have been the petitioners who may have been recipients of the loan and the others would be sureties. It does not lie in the mouth of the petitioners to make a grievance about the legality of the scheme only because they have been proceeded against for default committed by one of the borrowers under the scheme. The petitioners are not entitled to subscribe to a scheme of this nature and then protest when the liability falls on them.

4. In this view of the matter, I do not consider it an appropriate case for interference under Article 227 of the Constitution in the discretionary exercise of the jurisdiction of this court. Petition is dismissed.

DT.04.10.05 (S.A.BOBDE,J)

.....